

1 (b) For the purposes of this section individual means a  
2 person other than a corporation, business trust,  
3 partnership, association, or other legal entity.

4 Section 69.50. Judgment in Favor of State is Prima  
5 Facie Evidence. A final judgment or degree determining  
6 that a person has violated section 69.15 or 69.20 of this  
7 act in an action brought by the Territory under this Act,  
8 other than a consent judgment or degree entered before any  
9 testimony has been taken, is prima Facie evidence against  
10 that person in any other action against that person under  
11 the provisions of section 69.30 as to all matters with  
12 respect to which the judgment or degree would be an  
13 estoppel between the parties thereto. This section does  
14 not affect the application of collateral estoppel or issue  
15 preclusion.

16 Section 69.55. Limitation of Actions. (a) An action  
17 under this act to recover a civil penalty is barred if it  
18 is not commenced within four (4) years after the claim for  
19 relive accrues.

20 (b) An action under this act to recover damages is  
21 barred if it is not commenced within four years after the  
22 claim for relive accrues, or than one year after the  
23 conclusion of any timely action brought by the state in  
24 whole or in part on any matter complained of in the acting  
25 for damages, whichever is later.

26 Section 69.60. Remedies Cumulative: The remedies  
27 provided in this act are cumulative."  
28  
29  
30

1 (1) "Marketing channel" means a method of  
2 retail distribution, including, but not limited  
3 to, catalog sales, mail order, telephone sales,  
4 and in-person sales at retail outlets.

5 (2) "General merchandise retailer" means any  
6 person or entity regardless of the form of  
7 organization that has continuously offered for  
8 sale or lease more than 100 different types of  
9 goods or services to the public in the Territory  
10 of Guam throughout a period exceeding five years.

11 (3) Each violation of the provisions of this  
12 section is a misdemeanor.  
13

14 Article 5. Homeowners' warranties.

15 Section 32501. The Legislature finds that owners of  
16 new homes are entitled to protection through implied  
17 warranties, since most people cannot detect shoddy  
18 construction in new homes, since it is usually hidden. For  
19 purposes of this section, if an existing building not a  
20 condominium is remodeled into residential condominium units  
21 or otherwise converted into residential condominium units,  
22 the resulting residential condominiums shall be considered  
23 new homes. Consumers purchasing new homes or contracting  
24 for the construction of new homes after the effective date  
25 of this act are entitled to the following protections:

26 (a) The warranties of this section shall only  
27 apply to any new home having a total purchase price of  
28 more than \$50,000 if built on land supplied by the  
29 buyer of the new home in question, or a purchase price  
30 of more than \$65,000 if the price of the new home  
31 includes the land on which the home is built; except  
32 that warranties (b)(9), (b)(10), (b)(11) and (b)(12) of  
33 this section shall apply to all new homes regardless of  
34 values.

35 ( ) A new home has the following implied  
36 warranties:

1 (1) That the roof will not leak for 15 years  
2 if it is a concrete roof or that the roof will not  
3 leak for 10 years if it is not a concrete roof..

4 (2) That the building will remain  
5 structurally sound for 15 years.

6 (3) That the windows will not leak for 5  
7 years.

8 (4) That the electrical system (exclusive of  
9 wall plugs, switches, fixtures, and electrical  
10 outlets) will function for 7 years without need of  
11 repair.

12 (5) That the plumbing system (exclusive of  
13 sinks, showers, toilets, water heaters, and  
14 faucets) will function for 7 years without need of  
15 repair.

16 (6) That the sewer system will not back up  
17 and flood the home for 5 years.

18 (7) That groundwater will not seep through  
19 the floor for 10 years.

20 (8) That the home will remain Termite Free  
21 for 15 years.

22 (9) That the home was built in a workman  
23 like manner of suitable new materials of at least  
24 average quality, and that any exceptions thereto  
25 were communicated to the purchaser thereof in a  
26 separate writing signed by the purchaser before he  
27 occupied the home. Compliance with this paragraph  
28 shall not excuse compliance with any other  
29 warranty.

30 (10) That the home was built according to  
31 specifications, and that the home fully complies  
32 with all laws, the building code and all rules and  
33 regulations relating thereto.

34 (11) That the home is warranted against all  
35 other defects of construction, materials, and  
36 workmanship for 18 months.

1 (12) If the home was purchased from a  
2 developer who supplied both the lot and the home  
3 to the purchaser and did not build on a lot  
4 supplied by the purchaser, there is a warranty  
5 that the home will not flood for a period of 10  
6 years, typhoons excepted.

7 (b) The warranties of this section do not include  
8 damages caused by typhoon with sustained winds in  
9 excess of 75 miles per hour nor damage by an earthquake  
10 exceeding an intensity on Guam of 5.0 on the Richter  
11 Scale. Neither do the warranties cover extraordinary  
12 damages caused by acts of god, the negligence or  
13 intentional act of any other person, nor damages caused  
14 by failure to do normal maintenance, nor for damage  
15 caused by unusual usage, abandonment, or neglect of the  
16 property.

17  
18 Section 32502. The warranties contained in this Article  
19 may not be waived.

20  
21 Section 32503. The warranties contained in this Article  
22 may be exercised against the developer and the General  
23 Contractor who built the home, who shall be strictly liable  
24 for any breaches of warranty; as well as against any  
25 subcontractor responsible for installing the part of the  
26 home which in breach of warranty who shall be strictly liable  
27 for such breach of warranty in the part of the home he  
28 installed unless he can prove the defect was a design defect  
29 unknown to him or the result of defective materials unknown  
30 to him, and that he did all work in a workmanlike manner;  
31 and, if the breach of warranty is the result of a design  
32 defect or negligence in architectural supervision, the  
33 architect shall be strictly liable for all breaches of  
34 warranty resulting from faulty supervision or design; all of  
35 whom shall be jointly and severably liable for repair costs  
36 to correct such breach of warranty, and all damages arising

1 out of the breaches of warranty for which they are  
2 responsible. The warranties contained in this chapter can  
3 also be enforced against the manufacturer and supplier of  
4 defective materials used in the construction of the home and  
5 which defective materials were the cause of the breach of  
6 warranty. A person who meets the definition of a developer  
7 shall be liable hereunder if he is the seller or shares in  
8 or is to share in any part of the profit or loss on the sale  
9 or construction of the new home. If a new home is built  
10 for an owner who is not a developer, all other persons  
11 against whom a warranty can be exercised shall continue to  
12 be responsible, but such warranties may not be exercised  
13 against the original owner by subsequent owners of the home.  
14

15 Section 32504. If a person who is a developer actually  
16 lives in a new house as his domicile for at least two (2)  
17 years before selling the same, then the warranties of this  
18 chapter do not apply.  
19

20 Section 32505. Any settlement (in or out of court)  
21 between a consumer and developer or other person who is  
22 liable for breach of a warranty established by this Article  
23 is voidable by the consumer unless first approved in writing  
24 acknowledged by the consumer and signed by either the  
25 attorney general or an attorney representing the consumer.  
26 Any such settlement must include the satisfactory correction  
27 of all known defects, or if a defect is not correctable,  
28 shall provide for full compensation for the consumer's  
29 damages. The settlement shall apply only to known existing  
30 defects and may not contain a waiver of rights as to other  
31 defects not then existing and known to the consumer, nor  
32 shall it excuse any person liable hereunder from once again  
33 being responsible for correcting the same defect if the  
34 defect is not cured and remanifests itself.  
35

1           Section 32506. All warranties on a new home,  
2           expressed, implied, or as set forth in this Article, run  
3           with the land and, if the house is sold or transferred, the  
4           warranties pass with the land as a matter of law. Such  
5           warranties and the passing thereof do not in themselves  
6           create any right of action against any seller who is not a  
7           developer as defined above and who is not a person who was  
8           originally responsible for any warranty."  
9

10           Section 32506. All warranties contained in this article are  
11           in addition to all other warranties established by law, equity,  
12           or by agreement of the parties. Nothing in this article may be  
13           used as a defense in the enforcement of any other warranties.  
14

15           Section 2. Section 31107 of Chapter 31, Title 5 of The Guam Code Annotated is repealed.

16           Section 3. The Department of Law is authorized two addition FTE  
17           positions for attorneys and two additional FTE positions for non-  
18           attorney positions, all to work primarily on consumer issues and  
19           the enforcement of Chapter 32 of Title 5 of Guam Code Annotated  
20           (consumer protection) and Chapter 69 of title 9 of Guam Code  
21           Annotated (anti-trust).

22           Section 4. Chapter 69 of Title 9, Guam Code Annotated, is hereby enacted to read:

23                                   "CHAPTER 69  
24                                   ANTITRUST LAW

25           Section 69.10. Definitions. As used in this Chapter:

26                   (a) Person means an individual, corporation,  
27                   business trust, partnership, association, or any other  
28                   legal entity.

29                   (b) Relevant market means the geographical area  
30                   of actual or potential competition in a line of  
31                   commerce, all or any part of which is within the  
32                   Territory of Guam.

33                   Section 69.15. Contract, Combination, or  
34                   Conspiracy to Restrain or Monopolize Trade.

35                           (1) A contract, combination, or conspiracy  
36                           between two or more persons in restraint of, or to

1 monopolize, trade or commerce in a relevant market  
2 is unlawful; or

3 (2) A contract, agreement, combination or  
4 conspiracy which controls the quantity, price or  
5 exchange of any article of manufacture, product of  
6 the soil or mind or any goods in restraint of  
7 trade is unlawful; or

8 (3) Selling any goods or services at less  
9 than the cost thereof, to a Business Consumer or  
10 to give away any goods or services, for the  
11 purpose of injuring competitors or destroying  
12 competition is unlawful; or

13 (4) Secretly paying or allowing rebates,  
14 refunds, commissions, or unearned discounts,  
15 whether in the form of money or otherwise, or  
16 secretly extending to certain Business Consumers  
17 special services or privilege not extended to all  
18 Business Consumers purchasing upon like terms and  
19 conditions, to the injury of a competitor and  
20 where such payment or allowance tends to destroy  
21 competition, is unlawful; or

22 (28) Threatening economic retaliation or  
23 physical damage to any person or to any person's  
24 property if goods or services (as defined Article  
25 1 of Chapter 32 of Title 5 of Guam Code Annotated)  
26 are not purchased.

27  
28 Section 69.20. Establishment, Maintenance, or Use of  
29 Monopoly. The establishment, maintenance or use of a  
30 monopoly, or an attempt or conspiracy to establish a  
31 monopoly, of trade or commerce in a relevant market by any  
32 person, for the purpose of excluding competition or  
33 controlling, fixing, or maintaining prices is unlawful.

34 Section 69.25. Exclusions.

35 (a) Nothing in this Chapter forbids the existence  
36 and operation of any labor, agricultural, or

1 horticultural organization instituted for the purposes  
2 of mutual help, while lawfully carrying out its  
3 legitimate objects.

4 Section 69.30. Contracts for Restraint of Trade or  
5 Monopoly Void; Civil Liability of Participants; Injunctive  
6 Relief; Purchasers Relieved from Payment:

7 (a) All contracts and agreements in violation of  
8 sections 69.15 and 69.20 of this chapter shall be void,  
9 and any person threatened with injury, or injured in  
10 his business or property, directly or indirectly, by a  
11 violation of sections 69.15 and 69.20 of this Chapter,  
12 may bring an action for appropriate injunctive relief,  
13 up to threefold the damages sustained, and costs and  
14 reasonable attorney's fees.

15 (b) If the court finds that there was a willful  
16 violation of this chapter, it may award treble damages.

17 (c) For the purpose of this section. business or  
18 property includes business or nonbusiness purchases and  
19 business and nonbusiness injuries.  
20

21 Section 69.32 Judicial Jurisdiction. An action for  
22 violation of this Chapter shall may be brought in the  
23 Superior Court of Guam by any person or by the Attorney  
24 General in the name of the Government of Guam on behalf of  
25 the people of Guam, or, if the District Court of Guam has  
26 jurisdiction, it may be brought in the District Court of  
27 Guam.  
28

29 Section 69.35. Official Investigation:

30 (a) If the Attorney General has reasonable cause  
31 to believe that a person has information or in  
32 possession, custody, or control of any document or  
33 other tangible object relevant to an investigation for  
34 violation of this Chapter, the Attorney General may  
35 serve upon the person, before bringing any action in  
36 the Superior Court, a written demand to appear and be



1 examined under oath to answer written interrogatories  
2 under oath, and to produce the document or object for  
3 inspection and copying. The demand must:

4 (1) be served upon the person in a manner  
5 required for service of process in the Territory  
6 of Guam;

7 (2) describe the nature of the conduct  
8 constituting the violation under investigation;

9 (3) describe the document or object with  
10 sufficient definiteness to permit it to be fairly  
11 identified;

12 (4) contain a copy of the written  
13 interrogatories;

14 (A) prescribe a reasonable time of  
15 which the person must appear to testify,  
16 within which to answer the written  
17 interrogatories, and within which the  
18 document or object must be produced, and  
19 advise the person that a reasonable  
20 opportunity will be afforded for examination  
21 and notation of corrections upon any  
22 transcript of an oral examination, that a  
23 copy of ones own transcript can be obtained  
24 upon payment of reasonable charges, and that  
25 objections to or reasons for not complying  
26 with the demand may be filed with the  
27 Attorney General at or before the designated  
28 time;

29 (B) specify a place for the taking of  
30 testimony or for production and designate a  
31 person who shall be custodian of the document  
32 or objects; and

33 (C) shall be served with a copy of this  
34 chapter.

35 (b) If a person objects to or otherwise fails to  
36 comply with the written demand served upon that person

1 under subsection (a), the Attorney General may file in  
2 the superior Court of the Territory of Guam a petition  
3 for an order to enforce the demand. Notice of hearing  
4 the petition and a copy of the petition must be served  
5 upon the person, who may appear in opposition to the  
6 petition. If the court finds that the demand is  
7 proper, there is reasonable cause to believe there has  
8 been a violation of this Chapter, and the information  
9 sought or document or object demanded is relevant to  
10 the violation, it shall order the person to comply with  
11 the demand, subject to modification the court may  
12 prescribe. Upon motion by the person and for good  
13 cause shown, the court may make any further order in  
14 the proceedings that justice requires to protect the  
15 person from unreasonable annoyance, embarrassment,  
16 oppression, burden, or expense.

17 (c) Any procedure, testimony taken, or material  
18 produced under this Chapter and in the hands of the  
19 Attorney General is not a public document before  
20 bringing an action against the person under this  
21 Chapter for the violation under investigation, unless  
22 confidentiality is waived by the person being  
23 investigated and the person who has testified, answered  
24 interrogatories or produced material, or disclosure is  
25 authorized by the court. Nothing herein shall preclude  
26 discovery being had in any other case of materials  
27 obtained from a person and in the possession of the  
28 attorney general, to the same extent the material would  
29 be discoverable if it was in the possession of the  
30 person from whom taken.

31 (d) Any person compelled to appear under this  
32 section and required to testify under oath may be  
33 accompanied, represented and advised by counsel. An  
34 objection may properly be made, received and entered  
35 upon the record when it is claimed that such person is  
36 entitled to refuse to answer the questions on grounds

1 of any constitutional or any other legal right or  
2 privilege.

3 (e) Nothing in this section shall be read to  
4 prevent the regular use by the Attorney General of a  
5 Grand Jury for the production of documents or issuance  
6 subpoenas for witnesses, when the investigation relates  
7 to a criminal violation of this Chapter.

8  
9 Section 69.40. Criminal Penalty.

10 (a) Any person who violates section 69.15 and  
11 69.20 of this Chapter shall be guilty of a felony of  
12 the second degree. An indictment must be found or  
13 information or complaint filed within five (5) years  
14 from the date of the violation or from the date of the  
15 last overt act committed pursuant a conspiratorial  
16 plan.

17 (b) No criminal action may be brought against any  
18 person for the same violation for which such person has  
19 been convicted in a criminal proceeding for a violation  
20 of the federal antitrust laws.

21  
22 Section 69.45. Civil Penalty and Injunctive  
23 Enforcement by Territory:

24 (a) The Attorney General may bring an action for  
25 appropriate injunctive relieve and civil penalties in  
26 the name of the Territory for a violation of this  
27 Article. The trier fact may assess for the benefit of  
28 the territory a civil penalty of not more than One  
29 Million Dollars (\$1,000,000) each violation of this  
30 Article when the violation is by an individual. If the  
31 violation is committed by a person other than an  
32 individual, then the trier of fact may assess for the  
33 benefit of the Territory for the benefit of the  
34 Territory a civil penalty of not more than Fifty-  
35 Million Dollars (\$50,000,000) for each violation of  
36 this Article.

1  
2           Section 69.50. Judgment in Favor of State is Prima  
3 Facie Evidence. A final judgment or degree determining that  
4 a person has violated section 69.15 or 69.20 of this Chapter  
5 in an action brought by the Territory under this Chapter,  
6 other than a consent judgment or degree entered before any  
7 testimony has been taken, is prima Facie evidence against  
8 that person in any other action against that person under  
9 the provisions of section 69.30 as to all matters with  
10 respect to which the judgment or degree would be an estoppel  
11 between the parties thereto. This section does not affect  
12 the application of collateral estoppel or issue preclusion.  
13

14           Section 69.55. Limitation of Actions.

15           (a) An action under this chapter to recover a  
16 civil penalty is barred if it is not commenced within  
17 four (4) years after the claim for relive accrues.

18           (b) An action under this Chapter to recover  
19 damages is barred if it is not commenced within four  
20 years after the claim for relive accrues, or than one  
21 year after the conclusion of any timely action brought  
22 by the state in whole or in part on any matter  
23 complained of in the acting for damages, whichever is  
24 later.  
25

26           Section 69.60. Remedies Cumulative: The remedies  
27 provided in this chapter are cumulative. The provisions of  
28 this Chapter are not exclusive. The remedies specified in  
29 this Chapter for violation of any section of this Chapter or  
30 for conduct proscribed by any section of this Chapter shall  
31 be in addition to any other procedures or remedies for any  
32 violation or conduct provided for in any other law. Nothing  
33 in This Chapter shall limit any other statutory or any  
34 common law rights of the Attorney General, or any other  
35 person. If any act or practice proscribed by This Chapter  
36 is also the basis for a cause of action in common law or a

1 violation of another statute, the person may assert the  
2 common law or statutory cause of action under the procedures  
3 and with the remedies applicable thereto.  
4

5 Section 69.70 Severability. If any of the provisions  
6 of this Chapter or this act or the application thereof to  
7 any person or circumstance, is held invalid, such invalidity  
8 shall not affect any other provision or application of this  
9 act which can be given effect without the invalid provision  
10 or application, and to this end the provisions of this act  
11 are severable.  
12

13 Section 5. A new Section 391 is added to the Civil Procedure Code of Guam, to read as follows:

14 Section 391 Any person, who either as a director,  
15 officer, or agent of any firm or corporation or as an agent  
16 of any person, violating the provisions of Chapter 69 of  
17 Title 9 of Guam Code Annotated, Chapter 32 of Title 5 of  
18 Guam Code Annotated, or violating any other law, knowingly  
19 aids or assists, directly or indirectly, in such violation,  
20 knowing that the firm or corporation is violating a law, is  
21 responsible therefore equally with the person, firm or  
22 corporation in any civil case.  
23

24 Section 6. Subsection (a) of Section 43385 is amended to read:

25 "Section 43385. Approval.

26 (a) All rates, rate schedules, rate plans, and methods  
27 of computing rates applied to any insurance transacted in  
28 the territory of Guam shall be according to law and shall be  
29 filed in the office of the Commissioner. All rates, rate  
30 schedules, rate plans and methods of computing rates shall  
31 be approved by the Commissioner before any such rate may be  
32 charged, advertised, publicized, or otherwise represented.  
33 In addition, no rate, rate schedule, rate plan, or method of

1 computing rates not in effect on January 1, 1991, may be  
2 charged, advertised, publicized, or otherwise represented  
3 unless approved by the Commissioner and thereafter  
4 specifically approved by statute, if such change increases  
5 the rates of or decreases the benefits of any insured. The  
6 changes in the manner of computing rates set forth in this  
7 act shall be deemed approved and in effect.

8  
9  
10  
11 21-501/consum5.bil

Section 32501. The Legislature finds that owners of new homes are entitled to protection through implied warranties, since most people cannot detect shoddy construction in new homes, since it is usually hidden. For purposes of this section, if an existing building not a condominium is remodeled into residential condominium units or otherwise converted into residential condominium units, the resulting residential condominiums shall be considered new homes. Consumers purchasing new homes or contracting for the construction of new homes after the effective date of this act are entitled to the following protections:

(a) A new home has the following implied warranties:

(1) That the home was built in a workman like manner of suitable new materials of at least average quality, and that any exceptions thereto were communicated to the purchaser thereof in a separate writing signed by the purchaser before he occupied the home. Compliance with this paragraph shall not excuse compliance with any other warranty.

(2) That the home was built according to specifications, and that the home fully complies with all laws, the building code and all rules and regulations relating thereto.

(3) If the home was purchased from a developer who supplied both the lot and the home to the purchaser and did not build on a lot supplied by the purchaser, there is a warranty that the home will not flood for a period of 5 years.

(4) In addition to the foregoing warranties, the home is warranted against all

defects of construction, materials, and workmanship for 24 months.

(b) The warranties of this section do not include damages caused by typhoon with sustained winds in excess of 75 miles per hour nor damage by an earthquake exceeding an intensity on Guam of 5.0 on the Richter Scale. Neither do the warranties cover extraordinary damages caused by acts of god, the negligence or intentional act of any other person, nor damages caused by failure to do normal maintenance, nor for damage caused by unusual usage, abandonment, or neglect of the property.

(c) All times for warranties start to run when the new home is sold to the first occupant or owner or when the new home is completed as evidenced by a certificate of occupancy issued by the Guam Department of Public Works, as the case may be; or if both events occur, the latest date thereof.

(d) No bonding company which is bonding a contractor constructing a new home shall be responsible for any of the above warranties for breaches which occur more than 1 year after the date the certificate of occupancy is issued for the home by the Guam Department of Public Works.



APR 03 '91

TWENTY-FIRST GUAM LEGISLATURE  
1991 (FIRST) Regular Session

Bill No. 272 (COR)

Introduced by:

D. Parkinson
   
 M.C. RUTH
   
 F.R. SANTOS
   
 M. Manibusan
   
 Ad. Books

AN ACT TO REPEAL AND REENACT TITLE 5, GUAM CODE ANNOTATED,  
 CHAPTER 32, FOR THE PURPOSE OF STRENGTHENING THE REMEDIES  
 AVAILABLE UNDER THE CONSUMER PROTECTION LAW, and to add a new  
 Chapter 69 to 9 GCA to prohibit conspiracies in restraint of Trade (anti-trust  
 law)

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Title 5, Guam Code Annotated, Chapter 32 is hereby repealed and reenacted to read as follows:

"CHAPTER 32"

Article I. Consumer Protection General Regulations.

Section 32100. Liberal Construction. This chapter shall be liberally construed so that its beneficial purposes may be accomplished. (This chapter is based upon Texas and California consumer protection laws.)

Section 32101. Short Title. This Chapter may be cited as the Deceptive Trade Practices-Consumer Protection Act.

Section 32102. Waivers: Public Policy.

(a) Any waiver by a consumer of the provisions of this chapter is contrary to public policy and is unenforceable and void provided, however, that a waiver is valid and enforceable if a defendant in an action or claim under this chapter pleads and proves:

- (1) the consumer is not in a significantly disparate bargaining position; and

1           (2) the consumer is represented by legal counsel  
2           in seeking or acquiring goods or services, other than  
3           the purchase or lease for a consideration paid or to  
4           be paid that exceeds \$1,000,000; and

5           (3) prior to paying any consideration  
6           whatsoever, the consumer waives all or part of this  
7           chapter, other than Section 32113, by an express  
8           provision in a written contract signed by both the  
9           consumer and the consumer's legal counsel; and  
10          provided, however, that a business consumer with  
11          assets of \$5 million or more according to the most  
12          recent financial statement of the business consumer  
13          prepared in accordance with generally accepted  
14          accounting principles that has knowledge and  
15          experience in financial and business matters that  
16          enable it to evaluate the merits and risks of a  
17          transaction and that it is not in a significantly  
18          disparate bargaining position may by written contract  
19          prior to payment of any consideration waive the  
20          provisions of this chapter, other than Section 32113.

21          (b) The existence or absence of a disparate  
22          bargaining position may not be established as a matter of  
23          law solely by evidence of the consumer's financial position  
24          relative to other parties to the contract or by matters  
25          contained in a written contract relating to the relative  
26          bargaining position of the parties.

27          (c) An agreement to arbitrate constitutes an  
28          important waiver of the right of access to the courts. An  
29          agreement to arbitrate any matter arising out of the sale  
30          or rental of goods for any amount of consideration, or any  
31          matter or contingency arising therefrom, shall be treated  
32          as a waiver of rights under this act, is not binding on any  
33          consumer unless there is full compliance both with this  
34          section and with this chapter.

35          Section 32103. Cumulative Remedies. The provision of this  
36          chapter are not exclusive. The remedies provided in this

1 chapter are in addition to any other procedures or remedies  
2 provided for in any other law; provided, however, that no double  
3 recovery shall be permitted under both this chapter and another  
4 law of both actual damages and penalties for the same act or  
5 practice, act or practice that is a violation of a provision of  
6 law other than this chapter may be made the basis of an action  
7 under this chapter if the act or practice is proscribed by a  
8 provision of this chapter or is declared by such other law to be  
9 actionable under this chapter.

10  
11 Section 32104. Construction and Application. This chapter  
12 shall be liberally construed in favor of the consumer and  
13 applied to promote its underlying purposes, which are to protect  
14 consumers against false, misleading, and deceptive business  
15 practices, unconscionable actions, and breaches of warranty and  
16 to provide efficient and economical procedures to secure such  
17 protection. Nothing herein shall be construed as authorizing  
18 any person to conduct business in Guam without all necessary  
19 licenses and permits.

20  
21 Section 32105. Definitions.

22 As used in this chapter:

23 (a) "Goods" means tangible chattels, or real property  
24 purchased or leased for use. Goods also include stocks,  
25 bonds, and securities purchased for investment or resale,  
26 funeral plans, annuities, retirement plans, and also  
27 includes insurance policies purchased for the protection of  
28 a person or property.

29 (b) "Consumer Goods" means tangible goods purchased  
30 primarily for personal use or for use in the home or on a  
31 farm.

32 (c) "Consumer Services" means services purchased  
33 primarily for personal use or for use in the home or on a  
34 farm or to build, repair, maintain or enhance consumer  
35 goods.

1 (d) "Services" means work, labor, or service  
2 purchased or leased for use, including services furnished  
3 in connection with the sale or repair of goods.

4 (e) "Person" means an individual, partnership,  
5 corporation, association, or other group, however  
6 organized.

7 (f) "Consumer" means an individual, partnership,  
8 association, corporation, or the government of Guam who  
9 seeks or acquires by purchase or lease, any goods or  
10 services, except that the term does not include a business  
11 consumer that has assets of \$25 million or more, or that is  
12 owned or controlled by a corporation or entity with assets  
13 of \$25 million or more.

14 (g) "Non-business Consumer" is a consumer who  
15 purchases goods or services primarily for personal use or  
16 use in the home or on a farm.

17 (h) "Business consumer" means an individual,  
18 partnership or corporation who seeks or acquires by  
19 purchase or lease, any goods or services for commercial or  
20 business use. The term does not include the government of  
21 Guam.

22 (i) "Unconscionable action or course of action" means  
23 an act or practice which is perpetrated by a person in the  
24 course of business in the retail sale of a consumer goods  
25 or services and as a regular practice of that business, to  
26 the detriment of a non-business consumer:

27 (1) takes advantage of the lack of knowledge,  
28 ability, experience, or capacity of a person to a  
29 grossly unfair degree; or

30 (2) results in a gross disparity between the  
31 value received and consideration paid, in a  
32 transaction involving transfer of consideration.

33 (j) "Trade" and "commerce" means the advertising,  
34 offering for sale, sale, lease, or distribution of any good  
35 or service, of any property, tangible or intangible, real,  
36 personal, or mixed, and any other article, commodity, or

1 thing of value, wherever situated, and shall include any  
2 trade or commerce directly or indirectly affecting the  
3 people of the Territory of Guam.

4 (k) "Documentary material" includes the original or a  
5 copy of any book, record, report, memorandum, paper,  
6 communication, tabulation, map, chart, photograph,  
7 mechanical transcription, or other tangible document or  
8 recording, wherever situated.

9 (l) "Knowingly" means actual awareness of the  
10 falsity, deception, or unfairness of the act or practice  
11 giving rise to the consumer's claim or, in an action  
12 brought under Subdivision (2) of Subsection (a) of Section  
13 32109, actual awareness of the act or practice constituting  
14 the breach of warranty, but actual awareness may be  
15 inferred where objective manifestations indicate that a  
16 person acted with actual awareness.

17 (m) "Retail Sale" refers to the purchase of goods or  
18 services to an end user.

19  
20 Section 32106. Deceptive Trade Practices Unlawful.

21 (a) False, misleading, or deceptive acts or practices  
22 in the conduct of any trade or commerce are hereby declared  
23 unlawful and are subject to action by the Attorney General  
24 or private individuals as permitted pursuant to this  
25 chapter or other provisions of the Guam code. A violation  
26 consisting of any of the following prohibited acts or of  
27 any act prohibited by this title is in itself actionable,  
28 may be the basis for damages, rescission, or equitable  
29 relief. The provisions of this act are to be liberally  
30 construed in favor of the consumer balanced with  
31 substantial justice, and violation thereof may be raised as  
32 a claim, defense, crossclaim or counterclaim.

33 (b) Except as provided in Subsection (d) of this  
34 section, the term "false, misleading, or deceptive acts or  
35 practices" includes, but is not limited to, the following

1 acts. The following acts are hereby prohibited and  
2 declared illegal and contrary to public policy:

3 (1) passing off goods or services as those of  
4 another; or

5 (2) causing confusion or misunderstanding as to  
6 the source, sponsorship, approval, or certification of  
7 goods or services; or

8 (3) causing confusion or misunderstanding as to  
9 affiliation, connection, or association with, or  
10 certification by, another; or

11 (4) using deceptive representations or  
12 designations of geographic origin in connection with  
13 goods or services; or

14 (5) representing that goods or services have  
15 sponsorship, approval, characteristics, ingredients,  
16 uses, benefits, or quantities which they do not have  
17 or that a person has a sponsorship, approval, status,  
18 affiliation, or connection which he does not; or

19 (6) representing that goods are original or new  
20 if they are deteriorated, reconditioned, reclaimed,  
21 used, or secondhand. Motor vehicles shall be  
22 considered new or used based on the definitions of new  
23 and used motor vehicles as defined by the Federal  
24 Trade Commission; or

25 (7) representing that goods or services are of a  
26 particular standard, quality, or grade, or that goods  
27 are of a particular style or mode, if they are of  
28 another; or

29 (8) Representing by statements of fact that  
30 consumer goods or consumer services offered for sale  
31 have a grossly inflated value which the seller knows  
32 to be false and which is not based on the true retail  
33 value of the goods or services or comparables; or

34 (9) disparaging the goods, services, or business  
35 of another by false or grossly misleading  
36 representation of facts; or

1           (10) advertising goods or services with intent  
2           not to sell them as advertised; or

3           (11) advertising goods or services with intent  
4           not to supply a reasonable expectable public demand,  
5           unless the advertisements disclosed a limitation of  
6           quantity; or

7           (12) making false or misleading statements of  
8           fact concerning the reasons for, existence of, or  
9           amount of price reductions, provided that nothing  
10          herein shall prohibit a "sale", clearance sale,  
11          seasonal or holiday sale, or a sale based on reasons  
12          which do not imply a distressed or forced sale; or

13          (13) Falsely stating that one is selling or  
14          liquidating goods which are distressed or misrouted  
15          when the goods are not distressed or misrouted.

16          (14) representing that an agreement confers or  
17          involves rights, remedies, or obligations which it  
18          does not have or involve, or which are prohibited by  
19          law; or

20          (15) knowingly making false or misleading  
21          statements of fact concerning the need for parts,  
22          replacement, or repair service; or

23          (16) misrepresenting the authority of salesman,  
24          representative or agent to negotiate the final terms  
25          of a consumer transaction; or

26          (17) basing a charge for the repair of any item  
27          in whole or in part on a guaranty or warranty instead  
28          of on the value of the actual repairs made or work to  
29          be performed on the item without stating separately  
30          the charges for the work and the charge for the  
31          warranty or guaranty, if any; or

32          (18) disconnecting, turning back, or resetting  
33          the odometer of any motor vehicle so as to reduce the  
34          number of miles indicated on the odometer gauge; or

35          (19) As to comprehensive and collision insurance  
36          insuring the vehicle of an insured on policies written

1 after the effective date of this act, an insurer may  
2 not pay a consumer less than the face amount of an  
3 insurance policy for a covered loss which is a total  
4 loss, and the insurer is estopped from denying that  
5 the face amount of the policy showing the vehicle's  
6 value upon which the insurance premium was based is  
7 the true value of the vehicle, unless the insurer can  
8 show by a preponderance of the evidence:

9 (a) That the vehicle insured was damaged  
10 by an uninsured cause since the policy was  
11 written, or

12 (b) The vehicle has accumulated mileage in  
13 excess of 16,000 miles per year or part thereof  
14 since the vehicle was first registered, and that  
15 the excess mileage situation did not exist when  
16 the policy was written, or

17 (c) That the insured fraudulently and  
18 materially misrepresented material facts  
19 concerning the value of the property insured (the  
20 insured's statement as to the estimated of the  
21 value of the vehicle is not a misrepresentation  
22 of fact concerning the value of the vehicle), or

23 (d) That because of multiple insurance  
24 policies, a co-insurance situation exists.

25 When a vehicle suffers a total loss, the insured shall  
26 be entitled to a pro-rated refund of unused premiums  
27 pro-rated on the time coverage was in effect for the  
28 insured prior to the loss, for all insurance relating  
29 to the vehicle and its usage.

30 (20) Including a co-insurance clause in any  
31 policy of casualty insurance which would limit the  
32 liability of the insurance carrier based upon a theory  
33 of self insurance by the insured. Co-insurance shall  
34 apply only when there is overlapping insurance by two  
35 or more policies. In any case of dual insurance  
36 coverage, the limits of insurance shall be the total



1 limits of all policies, with payment of claims pro-  
2 rated between the various policies.

3 (21) advertising of any sale by fraudulently  
4 representing that a person is going out of business;  
5 or

6 (22) using or employing a chain referral sales  
7 plan in connection with the sale or offer to sell of  
8 goods, merchandise, or anything of value, which uses  
9 the sales technique, plan, arrangement, or agreement  
10 in which the buyer or prospective buyer is offered the  
11 opportunity to purchase merchandise or goods and in  
12 connection with the purchase receives the seller's  
13 promise or representation that the buyer shall have  
14 the right to receive compensation or consideration in  
15 any form for furnishing to the seller the names of  
16 other prospective buyers if receipt of the  
17 compensation or consideration is contingent upon the  
18 occurrence of an event subsequent to the time the  
19 buyer purchases the merchandise or goods; or

20 (23) representing that a guarantee or warranty  
21 confers or involves rights or remedies which it does  
22 not have or involve provided, however, that nothing in  
23 this chapter shall be construed to expand the implied  
24 warranty of merchantability as defined in Sections  
25 2314 through 2318 of Title 13 of the Guam Code  
26 Annotated to involve obligations in excess of those  
27 which are appropriate to the goods; or

28 (24) selling or offering to sell, either directly  
29 or associated with the sale of goods or services, a  
30 right of participation in a multi-level  
31 distributorship. As used herein, "multi-level  
32 distributorship" means a sales plan for the  
33 distribution of goods or services in which promises of  
34 rebate or payment are made to individuals, conditioned  
35 upon those individuals recommending or securing  
36 additional individuals to assume positions in the

1 sales operation, and where the rebate or payment is  
2 not exclusively conditioned on or in relation to  
3 proceeds from the retail sales of goods, provided that  
4 nothing herein shall prohibit the sale of a sales or  
5 presentation kit to prospective salespersons for \$150  
6 or less, provided that the kit is sold at not more  
7 than the actual cost to the seller, and that a full  
8 refund is offered to the buyer for 30 days after the  
9 delivery of the kit, if the buyer returns the kit to  
10 the seller, whether or not the kit is used, and  
11 further provided that the kit can be returned to a  
12 location in Guam and the refund immediately collected  
13 thereat; or

14 (25) representing that work or services have been  
15 performed on, or parts replaced in, goods when the  
16 work or services were not performed or the parts  
17 replaced; or

18 (26) representing that parts have been replaced  
19 in goods with new parts when in fact used parts were  
20 used for replacement; or

21 (27) the failure to disclose information  
22 concerning goods or services which was known at the  
23 time of the transaction if such failure to disclose  
24 such information was intended to induce the consumer  
25 into a transaction into which the consumer would not  
26 have entered had the information been disclosed. A  
27 dealer of vehicles shall reveal to a customer in  
28 writing all repair work done on a vehicle by the  
29 dealer or at the dealer's instruction prior to signing  
30 a contract of sale or selling a vehicle; or

31 (28) using the term "corporation,"  
32 "incorporated," "limited", or an abbreviation of  
33 either of those terms in the name of a business entity  
34 that is not incorporated under the laws of the  
35 territory of Guam or another jurisdiction; or

1           (29) Selling any article or product at less than  
2           the cost thereof, to a Business Consumer or to give  
3           away any article or product, for the purpose of  
4           injuring competitors or destroying competition.

5           (30) Secretly paying or allowing rebates,  
6           refunds, commissions, or unearned discounts, whether  
7           in the form of money or otherwise, or secretly  
8           extending to certain Business Consumers special  
9           services or privilege not extended to all Business  
10          Consumers purchasing upon like terms and conditions,  
11          to the injury of a competitor and where such payment  
12          or allowance tends to destroy competition, is  
13          unlawful; or

14          (31) Accepting deposits for goods and services  
15          without actually delivering the goods as promised. If  
16          goods or services are not delivered as promised, or if  
17          the amount of deposit paid by a consumer for goods or  
18          services is in excess of \$2,500, the deposit amount  
19          must be promptly deposited in a segregated bank  
20          account on Guam, and may not be withdrawn except after  
21          delivery of the goods or services, or for refund to  
22          the consumer; or

23          (32) Accepting money from a consumer for goods or  
24          services and not delivering the goods or services or  
25          dedicating the payment to fulfilling the order for  
26          goods or services; or

27          (33) Selling or offering to sell goods to any  
28          person which the seller has no right to sell or goods  
29          for which the seller cannot deliver clear title to the  
30          person. Nothing herein shall prevent the sale of  
31          goods which are subject to liens and encumbrances if  
32          revealed in writing to the buyer at or before the time  
33          of sale. Nothing herein shall excuse compliance with  
34          the Bulk Sales Act.; or

35          (34) Representing to a consumer that goods or  
36          services are immediately available for delivery or

1 performance when such is not the case. Unless a  
2 contract or receipt provides otherwise, goods must be  
3 delivered within 4 days of the payment therefore, and  
4 services must be commenced within 10 days of  
5 contracting therefore; or

6 (35) Selling or offering to sell goods or  
7 services which the seller thereof is not fully  
8 licensed to sell or offer for sale; or

9 (36) Selling or offering to sell services which  
10 the seller thereof is not fully licensed to performed;  
11 or

12 (37) Selling or offering to sell services which  
13 the seller thereof is not fully capable of providing;  
14 or

15 (38) Selling or offering to sell goods which the  
16 seller thereof is not fully licensed to sell; or

17 (39) Selling or offering to sell goods which the  
18 seller thereof does not have and cannot reasonably  
19 obtain for delivery to the consumer in a reasonable  
20 time; or

21 (40) Offering goods or services as a contractor,  
22 engineer or architect without being fully licensed to  
23 perform such services; or

24 (41) Selling or offering to sell services as a  
25 lawyer, doctor, certified public accountant, or  
26 dentist without being fully licensed in Guam and  
27 admitted to practice the profession in Guam; or

28 (42) Knowingly making false statements of fact as  
29 to the results of purchasing or using goods or  
30 services; or

31 (43) Threatening economic retaliation or physical  
32 damage to any person or to any person's property if  
33 goods or services are not purchased; or

34 (44) Violation of Regulation Z of the United  
35 States Federal Reserve Board in the sale of goods or  
36 services; or

1 (45) Violation of any rule or regulation of the  
2 United States Federal Trade Commission; or

3 (46) Violation of any rule or regulation of the  
4 United States Food and Drug Administration.

5 (47) Violation of any rule or regulation of the  
6 United States Security and Exchange Commission.

7 (c) Construction

8 (a) It is the intent of the legislature  
9 that in construing Subsection (a) of this section  
10 in suits brought under Section 32107 of this  
11 chapter the courts to the extent possible will be  
12 guided by Subsection (b) of this section the  
13 interpretations given by the United States  
14 Federal Trade Commission and federal courts to  
15 Section 5(a)(1) of the Federal Trade Commission  
16 Act [15 U.S.C.A. 45(a)(1)].

17 (b) In construing this chapter the court  
18 consider relevant and pertinent decisions of  
19 courts in other jurisdictions.

20 (d) The Superior Court of Guam may, upon application  
21 of the Attorney General or any person, enjoin misleading,  
22 or deceptive acts or practices designed to mislead  
23 consumers into buying goods or services.

24 (e) A contract for goods or services which is based  
25 on a false, misleading or deceptive act as described in  
26 this act is not enforceable by the person responsible for  
27 the false, misleading or deceptive act if there was  
28 reasonable reliance on or reasonable damage to the consumer  
29 from the false, misleading or deceptive act if there was  
30 reasonable reliance on or material damage to the consumer  
31 from the false, misleading or deceptive act.

32 (f) A sale of goods or services which is based on a  
33 false, misleading or deceptive act as described in this act  
34 may be revoked by the consumer if there was reasonable  
35 reliance on or material damage to the consumer from the  
36 false, misleading or deceptive act.

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Section 32107. Restraining Orders.

(a) Whenever the Attorney General or any person has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this chapter, and that proceedings would be in the public interest, the Attorney General or any person may bring an action in the name of the government of Guam against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice. The Attorney General shall be made a party as an intervening Plaintiff to all actions brought hereunder by any private party.

(b) The court may issue temporary restraining orders, temporary or permanent injunctions to restrain and prevent violations of this chapter and such injunctive relief shall be issued without bond.

(c) Upon a showing by a person the Attorney General indicating that fraud has occurred, and that there is a likelihood that the perpetrator will hide, spend, dispartate or abscond with the funds or assets, the court may order bank accounts and assets of the perpetrator frozen, pending resolution of the allegations. The owner of the assets or bank accounts may move to vacate the freeze on two working days notice or less if permitted by the court.

(d) in addition to the request for a temporary restraining order, or permanent injunction in a proceeding brought under Subsection (a) of this section, the Attorney General or any person may request a civil penalty of not more than \$5,000 per violation.

(e) The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice. Orders of the court may also

1 include the appointment of a receiver or a sequestration of  
2 assets if a person who has been ordered by a court to make  
3 restitution under this section has failed to do so within  
4 three months after the order to make restitution has become  
5 final and nonappealable.

6 (f) Any person who violates the terms of an  
7 injunction under this section shall forfeit and pay to the  
8 government of Guam a civil penalty of not more than \$10,000  
9 per violation. In determining whether or not an injunction  
10 has been violated the court shall take into consideration  
11 the maintenance of procedures reasonably adapted to insure  
12 compliance with the injunction. For the purposes of this  
13 section, the court issuing the injunction shall retain  
14 jurisdiction, and the cause shall be continued, and in  
15 these cases, the Attorney General, acting in the name of  
16 the territory of Guam, may petition for recovery of civil  
17 penalties under this section.

18 (g) An order of the court awarding civil penalties  
19 under subsection (e) of this section applies only to  
20 violations of the injunction incurred prior to the awarding  
21 of the penalty order. Second or subsequent violations of  
22 an injunction issued under this section are subject to the  
23 same penalties set out in Subsection (e) of this section.

24 (h) All actions brought under this Act shall be tried  
25 by the court without a jury to the extent permitted by the  
26 U.S. Constitution and the Organic Act of Guam. The  
27 Attorney General may represent one or more named consumers,  
28 may bring a class action, or may sue in the name of the  
29 Government of Guam to recover damages for unnamed Guam  
30 consumers, with information on the individual consumers and  
31 their losses and damages available on discovery.

32 (i) The Attorney General may represent in court  
33 victims of consumer fraud and persons who are victimized by  
34 a violation of this chapter in actions brought pursuant to  
35 this act or in pursuing any other legal or equitable remedy  
36 available.

1           (j) All civil penalties imposed under this act shall  
2 be paid over to the Consumer protection fund of the  
3 Government of Guam when collected.

4           (k) Whenever a private party brings an action for  
5 relief based upon this chapter, the Attorney General shall  
6 be served with a copy of the complaint and summons, and may  
7 intervene as a matter of right and may cross claim and  
8 counterclaim on behalf of other consumers.

9  
10 Section 32108. Exemptions.

11           (a) Nothing in this chapter shall apply to the owner  
12 or employees of a regularly published newspaper, magazine,  
13 or telephone directory, or broadcast station, or billboard,  
14 wherein in any advertisement in violation of this chapter  
15 is published or disseminated, unless it is established that  
16 the owner or employees of the advertising medium have  
17 knowledge of the false, deceptive, or misleading acts or  
18 practices declared to be unlawful by this chapter, or had a  
19 direct or substantial financial interest or commission in  
20 the sale or distribution of the unlawfully advertised good  
21 or service. Financial interest as used in this section  
22 relates to an expectation which would be the direct result  
23 of such advertisement.

24           (b) Nothing in this chapter shall apply to acts or  
25 practices authorized under specific rules or regulations  
26 promulgated by the Federal Trade Commission under Section  
27 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A.  
28 45(a)(1)]. The provisions of this chapter do apply to any  
29 act or practice prohibited or not specifically authorized  
30 by a rule or regulation of the Federal Trade Commission.  
31 An act or practice is not specifically authorized if no  
32 rule or regulation has been issued on the act or practice.

33  
34 Section 32109. Relief for Consumers.



1 (a) Any person or the Attorney General may maintain  
2 an action where any of the following constitute a producing  
3 cause of actual damages:

4 (1) the use or employment by any person of a  
5 false, misleading, or deceptive act or practice that  
6 is specifically enumerated in Chapter 32 of Title 5 of  
7 Guam Code Annotated. Suit may be brought directly  
8 notwithstanding an agreement to arbitrate, and  
9 arbitration may be bypassed by the consumer for  
10 violations of Chapter 32 of Title 5 of Guam Code  
11 Annotated; or

12 (2) breach of an express or implied warranty.  
13 Suit may be brought directly notwithstanding an  
14 agreement to arbitrate, and arbitration may be  
15 bypassed by the consumer for breach of express or  
16 implied warranty; or

17 (3) misrepresentation or fraud. Suit may be  
18 brought directly notwithstanding an agreement to  
19 arbitrate, and arbitration may be bypassed by the  
20 consumer for misrepresentation or fraud. In such  
21 case, all collateral issues not involving fraud or  
22 misrepresentation shall also be decided in the action;  
23 or

24 ~~{4}--any-unconscionable-action-or-course-of~~  
25 ~~action-by-any-person}~~

26 (b) In a suit filed under this section, each consumer  
27 who prevails may obtain:

28 (1) the amount of actual damages found by the  
29 trier of fact. In addition the court shall award two  
30 times that portion of the actual damages that does not  
31 exceed \$10,000. If the trier of fact finds that the  
32 conduct of the party was committed knowingly, the  
33 trier of fact may award not more than three times the  
34 amount of actual damages in excess of \$50,000,  
35 provided that:

1 (a) the provisions of Civil Code, as  
2 modified by the Rules of Civil Procedure for Guam  
3 shall govern the determination of the consumer's  
4 right under this chapter to recover actual and  
5 other damages, including exemplary damages, and  
6 the amount of those damages that may be recovered  
7 by the consumer under this chapter, in an action  
8 seeking damages for (i) death; (ii) personal  
9 injury; or (iii) damage to property other than  
10 the goods acquired by the purchase or lease that  
11 is involved in the consumer's action or claim if  
12 that damage arises out of an occurrence that  
13 involves death or bodily injury; and

14 (b) only in an action under this chapter  
15 that is subject to Paragraph (A) of this  
16 subdivision, the consumer's right to recover  
17 damages shall be subject to any defense or  
18 defensive matter that could be considered by the  
19 trier of fact in an action subject to Sections  
20 1714 and 1714.1 of the Civil Code, in determining  
21 the percentage of responsibility attributable to  
22 the consumer claimant under that Chapter;

23 (2) an order enjoining such acts or failure to  
24 act;

25 (3) orders necessary to restore to any party to  
26 the suit any money or property, real or personal,  
27 which may have been acquired in violation of this  
28 chapter; and

29 (4) any other relief which the court deems  
30 proper, including the appointment of a receiver or the  
31 revocation of a license or certificate authorizing a  
32 person to engage in business in the Territory of Guam  
33 if the judgment has not been satisfied within three  
34 months of the date of the final judgment.

35 Notwithstanding any other provision of law, the court  
36 may revoke or suspend a license to do business in the

1           territory of Guam or appoint a receiver to take over  
2           the affairs of a person who has failed to satisfy a  
3           judgment even if the person is a licensee of or  
4           regulated by an agency or board or other entity of the  
5           government of Guam which has statutory authority to  
6           revoke or suspend a license or to appoint a receiver  
7           or trustee. Costs and fees of such receivership or  
8           other relief shall be assessed against the party.

9           (c) On a finding by the court that an action under  
10          this section was groundless and brought in bad faith, or  
11          brought for the purpose of harassment, the court shall  
12          award to the party reasonable and necessary attorneys' fees  
13          and court costs.

14          (d) Each consumer who prevails shall be awarded court  
15          costs and reasonable and necessary attorneys' fees.

16  
17          Section 32110. Notice: Offer of Settlement.

18          (a) As a prerequisite to filing a suit seeking  
19          damages under Subdivision (1) of Subsection (b) of Section  
20          32109 of this chapter against any person, a consumer shall  
21          give written notice to the person at least 30 days before  
22          filing the suit advising the person, in reasonable detail,  
23          of the consumer's specific complaint and the amount of  
24          actual damages and expenses, including attorneys' fees, if  
25          any, reasonably incurred by the consumer in asserting the  
26          claim against the party. During the 30-day period a  
27          written request to inspect, in a reasonable manner and at a  
28          reasonable time and place, the goods that are the subject  
29          of the consumer's action or claim may be presented to the  
30          consumer. If the consumer unreasonably refuses to permit  
31          the inspection, the court shall not award the two times  
32          actual damages not exceeding \$10,000, as provided in  
33          Subsection (b) of Section 32109 of this chapter.

34          (b) If the 30 days written notice is given within 120  
35          days of the running of the statute of limitations, giving  
36          the notice as required by this section shall have the

1 effect of extending the statute of limitations until the  
2 121st day after the giving of the notice.

3 (c) Any person who receives the written notice  
4 provided by Subsection (a) of this section may, within 30  
5 days after the receipt of the notice, tender to the  
6 consumer a written offer of settlement, including an  
7 agreement to reimburse the consumer for the attorneys'  
8 fees, if any reasonably incurred by the consumer in  
9 asserting his claim up to the date of the written notice.  
10 A person who does not receive such a written notice due to  
11 the consumer's suit or counter claim being filed as  
12 provided for by Subsection (b) of this section may, within  
13 30 days after the filing of such suit or counterclaim,  
14 tender to the consumer a written offer of settlement,  
15 including an agreement to reimburse the consumer for the  
16 attorneys' fees, if any, reasonably incurred by the  
17 consumer in asserting his claim up to the date the suit or  
18 counterclaim was filed. Any offer of settlement not  
19 accepted within 30 days of receipt by the consumer shall be  
20 deemed to have been rejected by the consumer.

21 (d) A settlement offer made in compliance with  
22 Subsection (c) of this section, if rejected by the  
23 consumer, may be filed with the court together with an  
24 affidavit certifying its rejection. If the amount tendered  
25 in the settlement offer is the same as or more than, or if  
26 the court finds that amount to be substantially the same  
27 as, the actual damages found by the trier of fact, the  
28 consumer may not recover an amount in excess of the amount  
29 tendered in the settlement offer or the amount of actual  
30 damages found by the trier of fact, whichever is less.  
31 Such settlement offer shall not be admissible as evidence  
32 before a jury.

33 (e) The tender of an offer of settlement is not an  
34 admission of engaging in an unlawful act or practice or of  
35 liability under this Act. Evidence of a settlement offer  
36 may be introduced only to determine the reasonableness of

1 the settlement offer as provided for by Subsection (d) of  
2 this section.

3 (f) If a consumer is sued over a transaction by the  
4 seller, the consumer may raise the defenses permitted by  
5 this act and related to that transaction without need for a  
6 demand or settlement offer to the Plaintiff.

7 (g) Defective goods:

8 (a) New goods are defective if, within 30  
9 days of delivery, they break or fail to operate  
10 as intended through no fault of or misuse by the  
11 consumer. Goods which are found to be defective  
12 within 30 days of delivery must be corrected by  
13 the seller, and the seller may not rely upon any  
14 manufacturer's warranty to escape responsibility  
15 for correction. This subsection applies only to  
16 durable goods having a reasonable life expectancy  
17 of over 30 days. Goods having a shorter life  
18 expectancy are defective if they fail  
19 prematurely. This section does not apply to  
20 sales without warranty as described in subsection  
21 (3) of this subsection, below.

22 (b) After 30 days, goods shall be repaired  
23 or replaced according to the terms of warranty,  
24 if any, unless the seller has by advertisement,  
25 written or oral communication indicated some  
26 longer time for which the seller assumes  
27 responsibility. If a warranty is not honored,  
28 the consumer may elect to treat the goods as  
29 defective goods and proceed under this section  
30 against both the warrantor and the seller from  
31 whom the goods were purchased. Used goods are  
32 assumed to be sold as is where is without implied  
33 warranty, if the buyer knows the goods are used.  
34 If used goods are sold to a consumer as new, the  
35 court shall require repair, refund, or  
36 replacement as if the item were new, and in

1           addition, if the matter goes to suit, the court  
2           shall award the consumer punitive damages of  
3           \$2,000 or three times the value of the goods,  
4           whichever is greater.

5           (c) Nothing herein shall prohibit the sale  
6           of goods sold subject to a defect, nor the sale  
7           of goods as is where-is or without warranty if  
8           the defects or lack of warranty or selling as is  
9           where is disclosed to the consumer. As to goods  
10          having a sale price in excess of \$75, the  
11          disclosure must be in a separate writing signed  
12          by the consumer prior to purchase.

13          (d) The purchaser of new defective goods is  
14          entitled to have the actionable defects in the  
15          goods repaired at the expense of the seller; the  
16          goods replaced by like goods which are not  
17          defective upon return of the original goods to  
18          the seller; or to have the purchase price  
19          refunded upon return of the goods to seller, less  
20          damages done to the goods by the consumer and  
21          less the fair value of the usage of the item if  
22          used for more than 30 days; at the sole option of  
23          the seller as to whether to repair, replace, or  
24          refund. Unless it can be proven that the seller  
25          knowingly sold defective goods to a customer  
26          without knowledge of the defect, the consumer is  
27          not entitled to damages for the consumer's  
28          inconvenience nor for lost profits, but is  
29          entitled to other actual damages, plus, if the  
30          matter is brought to suit, the other relief  
31          allowed by this act. Before filing suit for such  
32          defective goods, the consumer must give a 30 day  
33          written notice of the defect, must make the goods  
34          reasonably available to the seller for  
35          inspection, and, if the consumer took delivery of  
36          the goods from the seller at the seller's place

1 of business, shall return the goods to the seller  
2 at the time of delivery of the notice for the  
3 seller's inspection.

4 (e) A consumer who is fraudulently sold  
5 used goods as new is entitled to refund of the  
6 cost of the goods, and may keep the goods as a  
7 penalty. In such case, all warranties shall  
8 continue in full force and effect. In the  
9 alternative, as to appliances and vehicles, the  
10 consumer may choose to keep the goods and the  
11 seller will make all necessary repairs and do all  
12 necessary repairs to the goods resulting from  
13 regular usage for a period of five years. Any  
14 other settlement between a consumer and a seller  
15 who has sold used goods as new is voidable by the  
16 consumer unless first approved in writing by the  
17 consumer and the attorney general.

18 Section 32111. Damages: Defenses.

19 (1) In an action brought under chapter, it is a  
20 defense to a cause of action if the party proves that  
21 he received notice from the consumer advising the  
22 party of the nature of the consumer's specific  
23 complaint and of the amount of actual damages and  
24 expenses due, if any, including attorneys' fees, if  
25 any, reasonably incurred by the consumer in asserting  
26 the claim against the party, and that within 30 days  
27 after the day on which the party received the notice  
28 the party tendered to the consumer:]

29 (2) the amount of actual damages or a demand to  
30 refund, replace, or repair the goods in the event of  
31 defective goods; and

32 (3) the allowable expenses, including attorneys'  
33 fees, if any, reasonably incurred by the consumer in  
34 asserting the claim against the party.

35 Section 32112. Promotional Material. If damages or civil  
36 penalties are assessed against the seller of goods or services

1 for advertisements or promotional material in a suit filed under  
2 Sections 32107 and 32109 of this chapter, the seller of the  
3 goods or services has a cause of action against a third party  
4 for the amount of damages or civil penalties assessed against  
5 the seller plus attorneys' fees on a showing that:

6 (a) the seller received the advertisements or  
7 promotional material from the third party;

8 (b) the seller's only action with regard to the  
9 advertisements or promotional materials was to disseminate  
10 the material; and

11 (c) the seller has ceased disseminating the material,  
12

13 Section 32113. Indemnity. A person against whom an action  
14 has been brought under this chapter may seek contribution or  
15 indemnity from one who, under the statute law or at common law,  
16 may have liability for the damaging event of which the consumer  
17 complains. A person seeking indemnity as provided by this  
18 section may recover all sums that he is required to pay as a  
19 result of the action, his attorney's fees reasonable in relation  
20 to the amount of work performed in maintaining his action for  
21 indemnity, and his costs.  
22

23 Section 32114. Limitation. All actions brought under this  
24 chapter must be commenced within three years after the date on  
25 which the false, misleading, or deceptive act or practice  
26 occurred or within three years after the consumer discovered or  
27 in the exercise of reasonable diligence should have discovered  
28 the occurrence of the false, misleading, or deceptive act or  
29 practice. The period of limitation provided in this section may  
30 be extended for a period of 180 days if the plaintiff proves  
31 that failure timely to commence the action was caused by the  
32 defendant's knowingly engaging in conduct solely calculated to  
33 induce the plaintiff to refrain from or postpone the  
34 commencement of the action.  
35

36 Section 32115. Voluntary Compliance.



1           (a) In the administration of this chapter the  
2 Attorney General may accept assurance of voluntary  
3 compliance with respect to any act or practice which  
4 violates this chapter from any person who is engaging in,  
5 has engaged in, or is about to engage in the act or  
6 practice. The assurance shall be in writing and shall be  
7 filed with and subject to the approval of the court in the  
8 form of an order form that the violator comply with the  
9 terms of the assurance of voluntary compliance.

10           (b) The acceptance of an assurance of voluntary  
11 compliance may be conditioned on the stipulation that the  
12 person in violation of this chapter restore to any person  
13 in interest any money or property, real or personal, which  
14 may have been acquired by means of acts or practices which  
15 violate this chapter.

16           (c) An assurance of voluntary compliance shall not be  
17 considered an admission of prior violation of this chapter.  
18 However, unless an assurance has been rescinded by  
19 agreement of the parties or voided by a court for good  
20 cause, subsequent failure to comply with the terms of an  
21 assurance is prima facie evidence of a violation of this  
22 chapter.

23           (d) Matters closed by the filing of an assurance of  
24 voluntary compliance may be reopened at any time.  
25 Assurances of voluntary compliance shall in no way affect  
26 individual rights of action under this chapter, except that  
27 the rights of individuals with regard to money or property  
28 received pursuant to a stipulation in the voluntary  
29 compliance under Subsection (b) of this section are  
30 governed by the terms of the voluntary compliance.

31  
32 Section 32116. Post Judgment Relief.

33           (a) If a money judgement entered under this chapter  
34 is unsatisfied 30 days after it becomes final and if the  
35 prevailing party has made a good faith attempt to obtain  
36 satisfaction of the judgment, the following presumptions

1 exist with respect to the party against whom the judgment  
2 was entered:

3 (1) that the judgement debtor is insolvent or in  
4 danger of becoming insolvent; and

5 (2) that the judgement debtor's property is in  
6 danger of being lost, removed, or otherwise exempted  
7 from collection on the judgement; and

8 (3) that the prevailing party will be materially  
9 injured unless a receiver is appointed over the  
10 defendant's business; and

11 (4) that there is no adequate remedy other than  
12 receivership available to the prevailing party.

13 (b) Subject to the provisions of Subsection (a) of  
14 this section, a prevailing party may move that the judgment  
15 debtor should show cause why a receiver should not be  
16 appointed. Upon adequate notice and hearing, the court  
17 shall appoint a receiver over the judgement debtor's  
18 business unless the judgment debtor proves that all of the  
19 presumptions set forth in Subsection (a) of this section  
20 are not applicable.

21 (c) The order appointing a receiver must clearly  
22 state whether the receiver will have general power to  
23 manage and operate the judgment debtor's business or have  
24 power to manage only a judgment debtor's finances. The  
25 order shall limit the duration of the receivership to such  
26 time as the judgment or judgments awarded under this  
27 chapter are paid in full. Where there are judgments  
28 against a judgment debtor which have been awarded to more  
29 than one plaintiff, the court shall have discretion to take  
30 any action necessary to efficiently operate a receivership  
31 in order to accomplish the purpose of collecting the  
32 judgments.

33  
34 Section 32117. Reports and Examinations. Whenever the  
35 Attorney General has reason to believe that a person is engaging  
36 in, has engaged in, or is about to engage in any act or practice

1 declared to be unlawful by this chapter, or when the Attorney  
2 General reasonably believes it to be in the public interest to  
3 conduct an investigation to ascertain whether any person is  
4 engaging in, has engaged in, or is about to engage in any such  
5 act or practice, an authorized member of the Attorney General's  
6 Office may:

7 (a) require the person to file on the prescribed  
8 forms a statement or report in writing, under oath or  
9 otherwise, as to all the facts and circumstances concerning  
10 the alleged violation and such other data and information  
11 as the Attorney General deems necessary;

12 (b) examine under oath any person in connection with  
13 this alleged violation;

14 (c) examine any merchandise or sample of merchandise  
15 deemed necessary and proper; and

16 (d) pursuant to an order of the appropriate court,  
17 impound any sample of merchandise that is produced in  
18 accordance with this chapter and retain it in the  
19 possession of the Attorney General until the completion of  
20 all proceedings in connection with which the merchandise is  
21 produced.

22  
23 Section 32118. Civil Investigative Demand.

24 (a) Whenever the Attorney General believes that any  
25 person may be in possession, custody, or control of the  
26 original copy of any documentary material relevant to the  
27 subject matter of an investigation of a possible violation  
28 of this chapter, an authorized agent of the Attorney  
29 General may execute in writing and serve on the person a  
30 civil investigative demand requiring the person to produce  
31 the documentary material and permit inspection and copying.

32 (b) Each demand shall:

33 (1) state the statute and section under which  
34 the alleged violation is being investigated, and the  
35 general subject matter of the investigation;

1           (2) describe the class or classes of documentary  
2 material to be produced with reasonable specificity so  
3 as to fairly indicate the material demanded;

4           (3) prescribe a return date within which the  
5 documentary material is to be produced; and

6           (4) identify the authorized agent or agents of  
7 the Attorney General's Office to whom the documentary  
8 material is to be made available for inspection and  
9 copying.

10          (a) A civil investigative demand may contain a  
11 requirement or disclosure of documentary material which  
12 would be discoverable under the Rules of Civil Procedure.

13          (b) Service of any demand may be made by:

14           (1) delivering a duly executed copy of the  
15 demand to the person to be served or to a partner or  
16 to any officer or agent authorized by appointment or  
17 by law to receive service of process on behalf of that  
18 person;

19           (2) delivering a duly executed copy of the  
20 demand to the principal place of business of the  
21 person to be served;

22           (3) mailing by registered mail or certified mail  
23 a duly executed copy of the demand addressed to the  
24 person to be served at the principal place of business  
25 or if the person has no place of business, to his  
26 principal office or place of business.

27          (c) Documentary material demanded pursuant to this  
28 section shall be produce for inspection and copying during  
29 normal business hours at the principal office or place of  
30 business of the person served, or at other times and places  
31 as may be agreed on by the person served and the Attorney  
32 General.

33          (d) No documentary material produced pursuant to a  
34 demand under this section, unless otherwise ordered by a  
35 court for a good cause shown, or unless otherwise  
36 discoverable if the materials were in the hands of the

1 person who produced the materials, shall be produced for  
2 inspection or copying by, nor shall its contents be  
3 disclosed to any person other than the authorized employee  
4 of the Attorney General's Office without the consent of the  
5 person who produced the material. The Attorney General  
6 shall prescribe reasonable terms and conditions allowing  
7 the documentary material to be available for inspection and  
8 copying by the person who produced the material or any duly  
9 authorized representative of that person. The Attorney  
10 General may use the documentary material or copies of it as  
11 it determines necessary in the enforcement of this chapter,  
12 including presentation before any court. Any material  
13 which contains trade secrets shall not be presented except  
14 with the approval of the court in which the action is  
15 pending after adequate notice to the person furnishing the  
16 material. All materials held by the attorney general  
17 pursuant to production are discoverable by a party in  
18 another court case to the same extent that the materials  
19 would be discoverable if still in the possession of the  
20 person who produced the materials for the Attorney General.

21 (e) At any time before the return date specified in  
22 the demand, or within 20 days after the demand has been  
23 served, whichever period is shorter, a petition to extend  
24 the return date for, or to modify or set aside the demand,  
25 stating good cause, may be filed in court.

26 (f) A person on whom a demand is served under this  
27 section shall comply with the terms of the demand unless  
28 otherwise provided by a court order.

29 (g) Service of a similar investigative demand under  
30 this section may be made on any person outside the  
31 Territory of Guam if the person has engaged in conduct in  
32 violation of this chapter. Such persons shall be deemed to  
33 have submitted themselves to the jurisdiction of the  
34 Territory of Guam within the meaning of this section.

35  
36 Section 32119. Penalties.

1           (a) Any person who, with intent to avoid, evade or  
2 prevent compliance, in whole or in part, with Section 32117  
3 or 32118 of this chapter, removes from any place, conceals,  
4 or withholds any documentary material or merchandise or  
5 sample of merchandise is guilty of a misdemeanor and on  
6 conviction is punishable by a fine of not more than \$5,000  
7 or by confinement in prison for not more than one year, or  
8 both.

9           (b) Any person who, with intent to avoid, evade or  
10 prevent compliance, in whole or in part, with Section 32117  
11 or 32118 of this chapter, destroys, mutilates, alters, or  
12 by any other means falsifies any documentary material or  
13 merchandise or sample of merchandise is guilty of a felony  
14 of the third degree and on conviction is punishable by a  
15 fine of not more than \$50,000 or by confinement in prison  
16 for not more than five years, or both.

17           (c) If a person fails to comply with a directive of  
18 the Attorney General under Section 32117 of this chapter or  
19 with a civil investigative demand for documentary material  
20 served on him under Section 32118 of this chapter, or if  
21 satisfactory copying or reproduction of the material cannot  
22 be done and the person refuses to surrender the material,  
23 the Attorney General may file in a petition for an order of  
24 the court for enforcement of Sections 32117 and 32118 of  
25 this chapter.

26           (d) When a petition is filed, the court shall have  
27 jurisdiction to hear and determine the matter presented and  
28 to enter any order required to carry into effect the  
29 provisions of Sections 32117 and 32118 of this chapter.  
30 Failure to comply with any final order entered under this  
31 section is punishable by contempt.

32  
33           Section 32120. Application. The penalty provisions of  
34 this chapter apply only to acts or practices occurring after the  
35 effective date of this chapter.  
36

1           Section 32121. Severability. If any of the provisions of  
2 this Act or the application thereof to any person or  
3 circumstance, is held invalid, such invalidity shall not affect  
4 any other provision or application of this Act which can be  
5 given effect without the invalid provision or application, and  
6 to this end the provisions of this Act are severable.

7           Section 32122. Remedies not exclusive.

8           (a) The provisions of this Chapter 32 are not  
9 exclusive. The remedies specified in Chapter 32 for  
10 violation of any section of Chapter 32 or for conduct  
11 proscribed by any section of Chapter 32 shall be in  
12 addition to any other procedures or remedies for any  
13 violation or conduct provided for in any other law.  
14 Nothing in Chapter 32 shall limit any other statutory or  
15 any common law rights of the Attorney General, or any other  
16 person. If any act or practice proscribed by Chapter 32 is  
17 also the basis for a cause of action in common law or a  
18 violation of another statute, the person may assert the  
19 common law or statutory cause of action under the  
20 procedures and with the remedies applicable thereto.

21           (b) Where any statute allows attorneys fees, such  
22 fees shall be awarded for services of the Attorney General  
23 in any case. All such fees shall be paid into the consumer  
24 protection fund. The Attorney General shall, by  
25 regulation, set the hourly rate or rates for Government  
26 Attorneys, such rate to be not less than general shall, by  
27 regulation, set the hourly rate or rates for Government  
28 Attorneys, such rate to be not less than \$125 per hour.  
29 Until such regulations are promulgated, the rates shall be  
30 \$125 per hour.

31  
32           Section 32123. Severability. If any provision of Chapter  
33 32 or the application thereof to any person or circumstance is  
34 held invalid, such invalidity shall not affect other provisions  
35 or applications of Chapter 32 which can be given effect without

1 the invalid provision or application, and to this end the  
2 provisions of this article are severable.

3  
4 Section 32124. Consumer Protection Fund.

5 (a) There is hereby established a fund to be known as  
6 the Consumer Protection Fund which shall be maintained  
7 separate and apart from any other funds of the government  
8 of Guam and independent records and accounts shall be  
9 maintained in connection therewith. All civil penalties  
10 collected by the government of Guam or any person under  
11 this Chapter shall be deposited in said Fund.

12 (b) The Consumer Protection Fund shall be used  
13 exclusively for the purpose of the administration of  
14 Chapters 31 and 32 of Title 5 of the Guam Code Annotated.  
15 Said Fund shall be examined and reported upon by the  
16 Director of Administration as required by law."

17  
18 Article 2. Telemarketing and Telephonic Sales.

19 Section 32201. Definitions.

20 (a) The term "telemarketing" means a plan, program,  
21 or campaign to induce the purchases of goods, services, or  
22 investment opportunities by means of telephone calls but  
23 does not include any transaction in which there has been  
24 any personal meeting or discussion concerning before or  
25 after the transaction between the seller (or the seller's  
26 agent) of the goods, services, or investment opportunities  
27 and the intended purchaser (or the purchaser's agent)  
28 before the consummation of the sale. Telemarketing does  
29 not include any situation where telephonic contact was  
30 initiated or requested by the consumer. Telemarketing does  
31 not include any solicitation by a seller if the seller and  
32 the consumer have transacted business or negotiations  
33 though any means other than telemarketing during the  
34 preceding 18 months.

35 (b) A "telephonic seller" or "seller" as used in this  
36 chapter means person, association, partnership, firm,



1 corporation or other business entity that engages in  
2 telemarketing.

3  
4 32202. Registration Procedures.

5 (a) Not less than 10 days prior to doing business in  
6 the Territory of Guam a telephonic seller shall register by  
7 filing with the Attorney General's office the information  
8 required by 32203 and paying a filing fee of Fifty Dollars  
9 (\$50.00). A seller shall be deemed to do business in the  
10 Territory of Guam if the seller solicits prospective  
11 purchasers from locations in this Territory of Guam or  
12 solicits prospective purchasers who are located in the  
13 Territory of Guam.

14 (b) The information required by 32203 shall be  
15 submitted on a form provided by the Attorney General and  
16 shall be verified by a declaration signed by each principal  
17 of the telephonic seller under penalty of perjury. The  
18 declaration shall specify the date and location of signing.  
19 Information submitted pursuant to this article shall be  
20 clearly identified and appended to the filing. The  
21 information submitted pursuant to 32203 shall become part  
22 of the investigatory records and intelligence information  
23 compiled by the department for law enforcement purposes.

24 (c) Registration of a telephonic seller shall be  
25 valid for one year from the effective date thereof and may  
26 be annually renewed by making the filing required by 32203  
27 and paying a filing fee of Fifty Dollars (\$50.00).

28 (d) Whenever, prior to expiration of a seller's  
29 annual registration, there is a material change in the  
30 information required by 32203, the seller shall, within 10  
31 days, file an addendum updating the information with the  
32 Attorney General's Office. However, changes in  
33 salespersons soliciting on behalf of a seller shall be  
34 updated by addendum filed, if necessary, in quarterly  
35 intervals computed from the effective date of registration.  
36 The addendum shall provide the required information for all

1 salespersons who are currently soliciting or have solicited  
2 on behalf of the seller at any time during the period  
3 between the filing of the registration, or the last  
4 addendum, and the current addendum, and shall include  
5 salespersons no longer soliciting for the seller as of the  
6 date of the filing of the current addendum.

7 (e) Upon receipt of a filing and filing fee pursuant  
8 to sub division (a) or (b), the Attorney General's Office  
9 shall send the telephonic seller a written confirmation of  
10 receipt of the filing. If the seller has more than one  
11 business location, the written confirmation shall be sent  
12 to the principal business location identified in the  
13 seller's filing.

14 (f) When goods are delivered to a consumer which have  
15 been ordered from a telephonic seller as a part of a  
16 telemarketing scheme, there shall also be delivered a  
17 written notice on a page by itself in at least 14 point  
18 type informing the customer that the customer may return  
19 the goods anytime within 30 days after actual receipt by  
20 the consumer, and may receive a full refund of all amounts  
21 paid, including all shipping and handling charges and all  
22 shipping charges paid by the consumer to return the goods.  
23 The notice shall indicate the name, address, and preferred  
24 method of return, provided that return by the US Postal  
25 Service, return in person by the consumer, or return by the  
26 same manner as shipped to the consumer shall always be  
27 appropriate, at the option of the consumer. The return  
28 shall be considered returned as of the date delivered to  
29 the addressee if delivered directly to the seller, or the  
30 date delivered by the Consumer to the US Postal Service or  
31 other appropriate common carrier. Upon actual receipt of  
32 such return, the seller shall within 5 working days return  
33 the full purchase price, including all handling and all  
34 shipping charges. Any seller who fails to make such refund  
35 when due shall be jointly liable with the individual  
36 salesperson who actually made the sale for three times the

1 total amount of the sale, including all shipping and  
2 handling charges.

3 (g) No sale of services, intangible goods, stocks,  
4 bonds, or investment opportunities by a telemarketing  
5 seller is final or enforceable until the consumer has  
6 signed a contract to purchase the same and delivered a  
7 signed copy of the contract to the seller. In the case of  
8 stocks, bonds, intangible goods, or investment  
9 opportunities the signature of the consumer must be  
10 acknowledged by a notary public to be enforceable. If a  
11 consumer has actually received stocks, bonds, intangible  
12 goods, or the investment opportunity prior to signing the  
13 required acknowledged contract, the consumer shall return  
14 whatever he received if the consumer disavows the  
15 transaction.

16 (h) No telemarketing seller may collect any sums due  
17 for telemarketing sales in violation of this chapter, and  
18 credit card charges for arising from the same are  
19 unenforceable against the consumer.

20 32203. Filing Information. Each filing pursuant to  
21 Section 32202 shall contain the following information:

22 (a) The name or names of the seller, including the  
23 name under which the seller is doing or intends to do  
24 business, if different from the name of the seller, and the  
25 name of any parent or affiliated organization (1) that will  
26 engage in business transactions with purchasers relating to  
27 sales solicited by the seller or (2) that accepts  
28 responsibility for statements made by, or acts of, the  
29 seller relating to sales solicited by the seller.

30 (b) The seller's business form and place of  
31 organization and, if the seller is a corporation, a copy of  
32 its articles of incorporation and bylaws and amendments  
33 thereto, or, if a partnership, a copy of the partnership  
34 agreement, or if operating under a fictitious business  
35 name, the location where the fictitious name has been  
36 registered. All the same information shall be included by

1 any parent or affiliated organization disclosed pursuant to  
2 subdivision (a).

3 (c) The complete street address or addresses of all  
4 locations, designating the principal location from which  
5 the telephonic seller will be conducting business. If the  
6 principal business location of the seller is not in the  
7 Territory of Guam, then the seller shall also designate a  
8 statutory agent within the Territory of Guam who is  
9 authorized to accept service of process.

10 (d) A listing of all telephone numbers to be used by  
11 the seller and the address where each telephone using each  
12 of these telephone numbers is located.

13 (e) The name of, and the office held by, the seller's  
14 officers, directors, trustees, general and limited  
15 partners, sole proprietor, and owners, as the case may be,  
16 and the names of those persons who have management  
17 responsibilities in connection with the seller's business  
18 activities.

19 (f) The complete address of the principal residence,  
20 the date of birth, and the driver's license number and  
21 state of issuance of each of the person whose names are  
22 disclosed pursuant to subdivision (e).

23 (g) A statement, meeting the requirements of this  
24 subdivision, as to both the seller, whether a corporation,  
25 partnership, firm, association, joint venture, or any other  
26 type of business entity (and whether identified pursuant to  
27 subdivision (e) or not, and as to any person identified  
28 pursuant to subdivision (e) who:

29 (1) Has been convicted of a felony or  
30 misdemeanor. For the purposes of this paragraph, a  
31 plea of nolo contendere is a conviction.

32 (2) Has at any time during the past seven years  
33 filed in bankruptcy or been adjudged a bankrupt.

34 (3) For purposes of paragraphs (1) and (2)  
35 above, the statement shall identify the seller or  
36 person, the court rendering the conviction or

1 judgment, and the docket number and date of the  
2 conviction or judgment.

3 (h) A list of the names and principal residence  
4 addresses of salespersons who solicit on behalf of the  
5 telephonic seller and the names the salespersons use while  
6 so soliciting.

7 (i) A description of the items the seller is offering  
8 for sale and a copy of all sales scripts the telephonic  
9 seller requires salespersons to use when soliciting  
10 prospective purchasers, or if no sales script is required  
11 to be used, a statement to that effect.

12 (j) A copy of all sales information and literature  
13 (including, but not limited to, scripts, outlines,  
14 instructions, and information regarding how to conduct  
15 telephonic sales, sample introductions, sample closing,  
16 product information, and contest or premium-award  
17 information) provided by the telephonic seller to  
18 salespersons or of which the seller informs salespersons,  
19 and a copy of all written materials the seller sends to any  
20 prospective or actual purchaser.

21 (k) If the telephonic seller represents or implies,  
22 or directs salespersons to represent or imply, to  
23 purchasers that the purchaser will receive certain specific  
24 items (including a certificate of any type which the  
25 purchaser must redeem to obtain the item described in the  
26 certificate) or one or more items from among designated  
27 items, whether the items are denominated as gifts,  
28 premiums, bonuses, prizes, or otherwise, the filing shall  
29 include the following:

30 (1) A list of the items offered.

31 (2) The value or worth of each item described to  
32 prospective purchasers and the basis for the  
33 valuation.

34 (3) The price paid by the telephonic seller to  
35 its supplier for each of these items and the name,  
36 address, and telephone number of each item's supplier.

1                   (4) If the purchaser is to receive fewer than  
2                   all of the items described by the seller, the filing  
3                   shall include the odds a single prospective purchaser  
4                   has of receiving each item and the name and address of  
5                   each recipient who has, during the preceding 12 months  
6                   (or if the seller has not been in business that long,  
7                   during the period the telephonic seller has been in  
8                   business) received the item having the greatest value  
9                   and the item with the smallest odds of being received.  
10

11                   32204. Violation Remedies. The Attorney General on behalf  
12                   of the government of Guam may bring an action against any  
13                   person, firm, corporation, partnership or association, or  
14                   officer or owner of any corporation who fails to comply with the  
15                   registration requirements of this chapter for a civil penalty of  
16                   not more than \$5,000 per violation and for a temporary  
17                   restraining order and a temporary and permanent injunction to  
18                   enjoin the telemarketing activities in the Territory of Guam of  
19                   violator. Any penalty collected shall be paid into the Consumer  
20                   Protection Fund.

21                   Article 3. Prizes and Gifts.

22                   Section 32301. Prize or gift offer; disclosure of intent  
23                   to make sales presentation; good faith broadcasts or  
24                   publications; applicability of section.

25                   (a) It is unlawful for any person to offer, by mail,  
26                   by telephone, in person or by any other means or in any  
27                   other form, a prize or gift, with the intent to offer a  
28                   sales presentation, without disclosing at the time of the  
29                   offer of the prize or gift, in a clear and unequivocal  
30                   manner, the intent of offer such sales presentation.

31                   (b) This section shall not apply to the publisher of  
32                   any news paper, periodical, or other publication, or any  
33                   radio or television broadcaster, or the owner or operator  
34                   of any cable, satellite, or other medium of communications  
35                   who broadcasts or publishes an advertisement or offer in

1 good faith, without knowledge of its violation of  
2 subdivision (a).

3 (c) Violation of this Article shall be deemed a  
4 deceptive trade practices pursuant to 32106(a) and is  
5 subject to action by the Attorney General under Section  
6 32107.

7 Section 32302. Unlawful advertising; conditional offer of  
8 prizes or gifts.

9 (a) It is unlawful for any person to use the term  
10 "prize" or "gift" or other similar term in any manner that  
11 would be untrue or misleading, including, but not limited  
12 to, the manner made unlawful in subdivision (b) or (c).

13 (b) If a person is notified that person has already  
14 won a prize in any contest, it is unlawful to require the  
15 purchase of goods or services or payment of any money  
16 whatsoever as a prerequisite to collect the prize, but the  
17 contest prize shall be delivered to the awardee without a  
18 requirement to pay money or purchase goods or services.

19 (c) It is unlawful to notify any person by any means  
20 that he or she will receive a gift and that as a condition  
21 of receiving the gift he or she must pay any money, or  
22 purchase or lease (including rent) any goods or services,  
23 if any one or more of the following conditions exist:

24 (1) The shipping charge, depending on the method  
25 of shipping used, exceeds

26 (a) the average cost of postage or the  
27 average charge of a delivery service in the  
28 business of delivering goods of like size,  
29 weight, and kind for shippers other than the  
30 offerer of the gift for the geographic area in  
31 which the gift is being distributed, or

32 (b) the exact amount for shipping paid to an  
33 independent fulfillment house or an independent  
34 supplier, either of which is in the business of  
35 shipping goods for shippers other than the  
36 offerer of the gift.

1                   (2) The handling charge

2                               (A) is not reasonable, or

3                               (B) exceeds that actual cost of  
4 handling, or

5                               (C) exceeds the sum of three dollars  
6 (\$3) in any transaction, or (D) in the case  
7 of a general merchandise retailer, exceeds  
8 the actual amount for handling paid to an  
9 independent fulfillment house or supplier,  
10 either of which is in the business of  
11 handling goods for businesses other than the  
12 offerer of the gift.

13                   (3) Any goods or services which must be  
14 purchased or leased by the offeree of the gift in  
15 order to obtain the gift could have been purchased  
16 through the same marketing channel in which the gift  
17 was offered for a lower price without the gift items  
18 at or proximate to the time the gift was offered.

19                   (4) The majority of the gift offerer's sales or  
20 leases within the preceding year, through the  
21 marketing channel in which the gift is offered or  
22 through in-person sales at retail outlets, of the type  
23 of goods or services which must be purchased or leased  
24 in order to obtain the gift item was made in  
25 conjunction with the offer of a gift. This paragraph  
26 does not apply to a gift offer made by a general  
27 merchandise retailer in conjunction with a sale at an  
28 on-island location, or to the sale or lease through  
29 mail order of goods or services (excluding catalog  
30 sales) if (A) the goods or services are of a type  
31 unlike any other type of goods or services sold or  
32 leased by the general merchandise retailer at any time  
33 during the period beginning six months before and  
34 continuing until six months after the gift offer, (B)  
35 the gift offer does not extend for a period of more



1 than two months, and (C) the gift offer is not untrue  
2 or misleading in any manner.

3 (5) The gift offerer represents that the offeree  
4 has been specially selected in any manner unless (A)  
5 the representation is true and (B) the offeree made a  
6 purchase from the gift offerer within the six-month  
7 period before the gift offer was made or has a credit  
8 card issued by, or a retail installment account with,  
9 the gift offerer or the offeree previously entered the  
10 contest offered by the offeree.

11 (6) Nothing in this section may be used as a  
12 defense by an offerer to prevent an offerer from  
13 awarding a prize to a contest winner, and nothing  
14 herein shall prevent legitimate contests which do not  
15 require the offeree to spend any money with the  
16 offerer or purchase any goods or services from the  
17 offerer. If an offerer offers a contest winner a  
18 prize, this section only invalidates any requirement  
19 that the winner purchase goods or services or pay  
20 money to get the prize, and does not relieve the  
21 offerer of the obligation to award the offeree the  
22 prize as one or promised. If a contest sponsor fails  
23 to award a prize as promised, the Superior Court may,  
24 upon application of the Attorney General or the prize  
25 winner, order the sponsor to make the award as  
26 promised or pay the full retail value of the prize,  
27 plus attorney's fees and such civil penalties as the  
28 court deems appropriate.

29 (7) This section does not apply to legitimate  
30 contests not requiring the purchase of goods or  
31 services, nor does it apply to games at Fiestan Guam.

32 (d) The following definitions apply to this section:

33 (1) "Marketing channel" means a method of retail  
34 distribution, including, but not limited to, catalog  
35 sales, mail order, telephone sales, and in-person  
36 sales at retail outlets.

1           (2) "General merchandise retailer" means any  
2           person or entity regardless of the form of  
3           organization that has continuously offered for sale or  
4           lease more than 100 different types of goods or  
5           services to the public in the Territory of Guam  
6           throughout a period exceeding five years.

7           (3) Each violation of the provisions of this  
8           section is a misdemeanor. Chapter V.

9           Article 4 - Homeowner's Warranties.

10          Section 32401. The Legislature finds that owners of new  
11          homes are entitled to protection through implied warranties,  
12          since most people cannot detect shoddy construction in new  
13          homes, since it is usually hidden. Owners of new homes are  
14          entitled to the following protections:

15                 (a) "Home" as used herein is any building constructed  
16                 for Human habitation, including houses, apartment  
17                 buildings, and condominium.

18                 (b) "Developer" includes any person who shares any  
19                 part of the profit or loss on the sale of a new home. It  
20                 does not include lending institutions or real estate  
21                 brokers not having an equity position in the new home or  
22                 project.

23          (3) A new home has the following implied warranties:

24                         (1) That the roof will not leak for 15 Years.

25                         (2) That the building will remain structurally  
26                         sound for 15 years.

27                         (3) That the windows will not leak for 10 years.

28                         (4) That the electrical system (exclusive of  
29                         wall plugs, switches and electrical outlets) will  
30                         function for 5 years without need of repair.

31                         (5) That the plumbing system (exclusive of  
32                         sinks, showers, toilets, water heaters, and faucets)  
33                         will function for 5 years without need of repair.

34                         (6) That the sewer system will not back up and  
35                         flood the home for 5 years.

1           (7) That groundwater will not seep through the  
2 floor for 5 years.

3           (8) That the home will remain Termite Free for  
4 10 years.

5           (9) That the home was built in a workman like  
6 manner, and that any exceptions thereto were  
7 communicated to the owner thereof before he occupied  
8 the home.

9           (10) That the home is warranted against all other  
10 defects of construction for 18 months.

11           (11) If the home was purchased from a developer  
12 who supplied both the lot and the home to the  
13 purchaser and did not build on a lot supplied by the  
14 purchaser, there is a warranty that the home will not  
15 flood for a period of 15 years, typhoons excepted.

16           (12) The warranties do not include damages caused  
17 by typhoon or damage by an earthquake exceeding 6.5 on  
18 the Richter Scale. Neither do the warranties cover  
19 extraordinary damages caused by the negligence or  
20 intentional act of any other person, nor damages  
21 caused by unusual usage, abandonment, or neglect of  
22 the property.

23           (13) The warranties may not be waived.

24           (14) The warranties may be exercised against the  
25 developer, the General Contractor, any subcontractor  
26 responsible for installing the part of the home which  
27 is damaged; and, if the problem is a the result of a  
28 design defect or negligence in architectural  
29 supervision, the architect; all of whom shall be  
30 jointly and severably liable for repair costs and  
31 damages.

32           Section 2. Section 31107 of Chapter 31, Title 5 of The  
33 Guam Code Annotated is repealed.

34           Section 4. Chapter 69 of Title 9, Guam Code Annotated, is  
35 hereby enacted to read:

36                                   "CHAPTER 69

## ANTITRUST LAW

Section 69.10. Definitions. As used in this Act:

(a) Person means an individual, corporation, business trust, partnership, association, or any other legal entity.

(b) Relevant market means the geographical area of actual or potential competition in a line of commerce, all or any part of which is within the Territory of Guam.

Section 69.15. Contract, Combination, or Conspiracy to Restrain or Monopolize Trade. (a) A contract, combination, or conspiracy between two or more persons in restraint of, or to monopolize, trade or commerce in a relevant market is unlawful.

(b) A contract, agreement, combination or conspiracy which controls the quantity, price or exchange of any article of manufacture, product of the soil or mind or any goods in restraint of trade is unlawful.

Section 69.20. Establishment, Maintenance, or Use of Monopoly. The establishment, maintenance or use of a monopoly, or an attempt or conspiracy to establish a monopoly, of trade or commerce in a relevant market by any person, for the purpose of excluding competition or controlling, fixing, or maintaining prices is unlawful.

Section 69.25. Exclusions.

(a) Labor of a human being is not a commodity or an article of commerce.

(b) Nothing in this act forbids the existence and operation of any labor, agricultural, or horticultural organization instituted for the purposes of mutual help, while lawfully carrying out its legitimate objects.

Section 69.30. Contracts for Restraint of Trade or Monopoly Void; Civil Liability of Participants; Injunctive Relief; Purchasers Relieved from Payment: (a) All contracts and agreements in violation of sections 69.15 and 69.20 of this chapter shall be void, and any person threatened with injury, or injured in his business or property, directly or indirectly, by a violation of

1 sections 69.15 and 69.20 of this act, may bring an action  
2 for appropriate injunctive relief, up to threefold the  
3 damages sustained, and costs and reasonable attorney's  
4 fees. If the trier fact finds that the facts so justify,  
5 damages may be awarded in an amount less than that  
6 requested, but not less than the damages actually  
7 sustained.

8 (b) For the purpose of this section. business or  
9 property includes business or nonbusiness purchases and  
10 business and nonbusiness injuries.

11 Section 69.32 Judicial Jurisdiction. An action for  
12 violation of this Act shall be brought in Superior Court.

13 Section 69.35. Official Investigation: (a) If the  
14 Attorney General has reasonable cause to believe that a  
15 person has information or in possession, custody, or  
16 control of any document or other tangible object relevant  
17 to an investigation for violation of this Act, the Attorney  
18 General may serve upon the person, before brining any  
19 action in the Superior Court, a written demand to appear  
20 and be examined under oath to answer written  
21 interrogatories under oath, and to produce the document or  
22 object for inspection and copying. The demand must:

23 (1) be served upon the person in a manner required  
24 for service of process in the Territory of Guam;

25 (2) describe the nature of the conduct constituting  
26 the violation under investigation;

27 (3) describe the document or object with sufficient  
28 definiteness to permit it to be fairly identified;

29 (4) contain a copy of the written interrogatories;

30 (1) prescribe a reasonable time of which the person  
31 must appear to testify, within which to answer the  
32 written interrogatories, and within which the document  
33 or object must be produced, and advise the person that  
34 a reasonable opportunity will be afforded for  
35 examination and notation of corrections upon any  
36 transcript of an oral examination, that a copy of ones

1 own transcript can be obtained upon payment of  
2 reasonable charges, and that objections to or reasons  
3 for not complying with the demand may be filed with the  
4 Attorney General at or before the designated time;

5 (2) specify a place for the taking of testimony or  
6 for production and designate a person who shall be  
7 custodian of the document or objects; and

8 (3) contain a copy of this Act.

9 (b) If a person objects to or otherwise fails to comply  
10 with the written demand served upon that person under  
11 subsection (a), the Attorney General may file in the  
12 superior Court of the Territory of Guam a petition for an  
13 order to enforce the demand. Notice of hearing the  
14 petition and a copy of the petition must be served upon the  
15 person, who may appear in opposition to the petition. If  
16 the court finds that the demand is proper, there is  
17 reasonable cause to believe there has been a violation of  
18 this act, and the information sought or document or object  
19 demanded is relevant to the violation, it shall order the  
20 person to comply with the demand, subject to modification  
21 the court may prescribe. Upon motion by the person and for  
22 good cause shown, the court may make any further order in  
23 the proceedings that justice requires to protect the person  
24 from unreasonable annoyance, embarrassment, oppression,  
25 burden, or expense.

26 (c) Any procedure, testimony taken, or material  
27 produced under this section must be kept confidential by  
28 the Attorney General before bringing an action against the  
29 person under this Act for the violation under  
30 investigation, unless confidentiality is waived by the  
31 person being investigated and the person who has testified,  
32 answered interrogatories or produced material, or  
33 disclosure is authorized by the court.

34 (d) Any person compelled to appear under this section  
35 and required to testify under oath may be accompanied,  
36 represented and advised by counsel. An objection may

1 properly be made, received and entered upon the record when  
2 it is claimed that such person is entitled to refuse to  
3 answer the questions on grounds of any constitutional or  
4 any other legal right or privilege.

5 (e) Nothing in this section shall be read to prevent  
6 the regular use by the Attorney General of a Grand Jury for  
7 the production of documents or issuance subpoenas for  
8 witnesses, when the investigation relates to a criminal  
9 violation of this act.

10 Section 69.40. Criminal Penalty. (a) Any person who  
11 violates section 69.15 and 69.20 of this Act shall be  
12 guilty of a felony of the second degree. An indictment  
13 must be found or information or complaint filed within five  
14 (5) years from the date of the violation or from the date  
15 of the last overt act committed pursuant a conspiratorial  
16 plan.

17 (b) No criminal action may be brought against any  
18 person for the same violation for which such person has  
19 been convicted in a criminal proceeding for a violation of  
20 the federal antitrust laws.

21 Section 69.45. Civil Penalty and Injunctive  
22 Enforcement by Territory: (a) The Attorney General may  
23 bring an action for appropriate injunctive relieve and  
24 civil penalties in the name of the Territory for a  
25 violation of section 69.15 or 69.20 of this Act. The trier  
26 fact may assess for the benefit of the territory a civil  
27 penalty of not more than fifty thousand dollars (\$50,000)  
28 each violation of this act when the violation is by an  
29 individual. If the violation is committed by a person  
30 other than an individual, then the trier of fact may assess  
31 for the benefit of the Territory for the benefit of the  
32 Territory a civil penalty of not more than two hundred and  
33 fifty thousand dollars (\$250,000) for each violation of  
34 this act.